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POLITICAL SCIENCE QUARTERLY.

SLAVERY IN EARLY TEXAS. I.

THE history of slavery in Texas, so far as it is of interest to us, began with the year 1821, when Moses Austin received permission to plant an Anglo-American colony on the banks of the Colorado and the Brazos. There may have been a few negroes in the little towns of Bexar and La Bahia at that time, but the number must have been insignificant and limited wholly to personal servants in the families of the well-to-do.¹ The coming of the energetic pioneers from the United States and the development of the rich bottom lands of Texas marked the beginning of a new era, not only in the history of Mexico, but in that of America; and the question of slavery in this wilderness, at that time seemingly of interest only to a few thousand farmers, was soon to engage the attention and determine the policy of the great neighboring nation.

Under the Spanish rule in Mexico negro slavery was tolerated and protected. The conditions, however, were so unfavorable that the institution never obtained a secure foothold, and was almost unknown outside of Vera Cruz and the hot lands. Even in the most favorable localities and after the introduction of cane growing, the slaves formed no considerable element in the population of the country. As late as 1793, according to Humboldt, there were not more than nine or ten thousand in

¹ In a total population of 3005, December 31, 1792, there were 34 negroes and 415 mulattoes; no mention is made of slaves. — Census of Texas, Texas Archives, No. 345

all New Spain.¹ H. G. Ward, the British agent in Mexico in 1825-27, believed that the number did not exceed six thousand in 1793, and that it continued to decrease till 1827. So many were manumitted, and so many received their freedom during the long struggle for independence by joining the ranks of the patriot army, that Ward thought he was "justified in stating that there is now hardly a single slave in the central portion of the republic."² Not one could be found in the valley of Cuernavaca, or even in the Orizaba and Cordova regions, which are the great sugar and coffee districts of Mexico.³ About fifteen years later, Waddy Thompson, the representative of the United States government, did not see half a dozen negroes during his entire residence of two years in the Mexican capital.⁴

The petition of Moses Austin for permission to settle an Anglo-American colony in Texas was officially granted in January, 1821. No mention was made of slavery in either the petition or the grant. It was the intention of Austin, however, to draw most of his colonists from the southern United States; and there can be but little doubt that he would have favored the removal of slaves to Texas as part of the capital of his planters. But it was not for him to lead the migration for which he had prepared the way. The long journey to San Antonio de Bexar, with its hardships and exposure, resulted in his death,⁵ and the work of carrying forward the colonization of Texas fell to his son.

Stephen Fuller Austin, then a young man of twenty-eight, at once made an exploring tour through Texas, was recognized as heir to his father's grant, and received the governor's approval of the plan which he had drawn up for the distribution of lands.⁶ This plan, after making provision for the head of the family and allowing a liberal portion for the wife and each

¹ Humboldt, *Ensayo politico sobre la Nueva España*, I, 252.

² Ward, *Mexico in 1827*, I, 27.

³ *Ibid.*, p. 29.

⁴ Thompson, *Recollections of Mexico*, p. 5.

⁵ He died in Missouri, June 10, 1821.

⁶ H. H. Bancroft, *North Mexican States and Texas*, II, 60.

child, further provided for a grant of eighty acres of land for each slave belonging to the family.¹ In approving this plan, the government of Mexico, through its representative in Texas, acquiesced in and substantially encouraged the introduction of slaves into the new settlement.² A great many immigrants found their way into Texas before the summer of 1822, most of them bearing contracts signed by Austin or his agents, in which they were promised land in accordance with the plan already mentioned. They were nearly all from the southern portion of the United States, and many of them were the owners of at least a small number of slaves. Thus it was that the institution was introduced into Texas.

But difficulties arose: for some reason the governor of Texas declined to put the settlers in possession of the promised lands, and Austin felt that the situation demanded his presence in the City of Mexico, where Congress was in session. Apparently it is not generally understood how momentous were the consequences of that journey. He remained in Mexico for more than a year; he made himself familiar with the language and the life of the people; he became intimate with many of the leaders of the Mexican nation; and he inspired the government with a confidence in his character and purpose that greatly facilitated the growth of the infant settlement in the wilderness of Texas.

¹ Form of contract, in Austin Papers (collection of Hon. Guy M. Bryan, Quintana, Texas), C 5; also contract with David Marple, Austin Papers, A 14. Not an acre of land was ever distributed according to this plan. The colonization law, which was passed soon afterwards, offered far more liberal terms.

² The governor of Texas was acting as an official of the revolutionary and independent government of Mexico when he approved Austin's plan for the distribution of lands. It is incorrectly stated by H. H. Bancroft (*North Mexican States and Texas*, II, 62) and John Henry Brown (*History of Texas*, I, 94, note) that the news of the success of the revolution in Mexico did not reach San Antonio de Bexar till after Austin's departure from that place. Austin's journal, however, under date of August 12, 1821, a few hours before arriving at San Antonio, has the following record: "This morning at daylight three men who had been dispatched from the Gae [Guadaloupe] by Erasmo to St. A^o returned with others and brought the Glorious news of the Independence of Mexico. The Spaniards hailed this news with acclamations of 'Viva Independencia,' and every other demonstration of joy." The Plan of Iguala had been proclaimed February 24, 1821; and the treaty of Cordova was signed August 24 of the same year.

Austin arrived at the Mexican capital in April, 1822 — a little more than a year after the proclamation of the Plan of Iguala and about two months after the assembling of the first Congress. He witnessed in rapid succession the elevation of Iturbide to the imperial throne, the dissolution of Congress, the fall of the Emperor and the establishment of the provisional republican government. All this time he was urging, in memorial after memorial, the confirmation of the grant made to his father by the Spanish government. But his was not the only application before Congress for leave to bring settlers to Mexico;¹ and to meet this demand for lands that body very early occupied itself with framing a general colonization law. The wheels of government, however, move slowly in Mexico, and particularly was this true during that year of exciting change. Austin believed that the law would never have been passed, had he not been present and constantly urging the matter upon the attention of the lawmakers.²

The question of slavery presented the greatest obstacle to the passage of the law. Austin believed that at least temporary toleration of slavery was necessary to the success of his colony. It was the slaveholding population of Missouri, Louisiana, Tennessee, Kentucky, Arkansas, and Mississippi that had shown the greatest interest in his settlement, and it was from the slave states of the American Union that he expected future support in his enterprise. On the other hand, the Mexican people were at that time passing through a period of fervent advocacy of liberty. Had they not just been freed from Spain? Should they not extend this great boon, liberty, to all people within the authority of their laws? Then, too, — and this was more important than all their theories of liberty and natural equality, — it was merely an abstract question with them, for they had few slaves to lose by a general emancipation.

¹ Benjamin Mailan and three companions, Jacob Ferrier and Christopher Nagel are mentioned in the journals of the Congress. Edwards, Leftwich, DeWitt, Wilkinson and others are mentioned by various authorities.

² Austin to Governor Trespalacios, January 8, 1823. — Austin Papers, unclassified.

It was the opinion of some members of Congress that slavery should be made the subject of a separate law, in which other phases of the matter, as well as its relation to the colonization of the provinces, could be considered in detail;¹ but it was of the highest importance to the interests of Austin that the matter should be settled at once. A colonization law, however liberal its terms might be in other respects, would be almost a dead letter so far as he was concerned until Congress announced its policy as to slavery.

Three colonization bills were offered in Congress. One was silent on the subject of slavery except as to cities, declaring that foreigners might be allowed the privilege of founding cities only on the condition of adopting the Spanish language and freeing their slaves.² Another declared outright for immediate emancipation.³ But the bill reported by the committee on colonization contained a clause to the effect that slaves introduced into the Empire by colonists should remain so for life, and their children born in the Empire should gain their freedom at the age of fourteen. During the debate on this subject, no member announced himself as inclined to make any greater concession to slavery.

After considerable delay, Congress finally reached the colonization bill, August 20, 1822. During the general discussion of the measure very little was said about slavery, and no objection was raised on the floor to the disposition of the matter made by the committee. The bill, however, proved unsatisfactory; and, after a discussion of only two of its thirty-one articles, it was recommitted with certain instructions, none of which concerned slavery.⁴ No further progress was made in the matter. The attention of Congress soon became wholly absorbed in the approaching struggle with the Emperor; and the crisis was reached on October 30, 1822, when Iturbide drove the members out of doors at the point of the bayonet.

Austin was a close observer of these events, and, as they progressed, lost all hope of obtaining even as favorable a law as

¹ *Actas del Congreso Constituyente Mexicano*, III, 57.

² *Ibid.*, pp. 32, 33.

³ *Ibid.*, p. 52.

⁴ *Ibid.*, pp. 15-88.

the committee on colonization had reported. He very probably regarded the dispersion of Congress as a stroke of good fortune ; at all events, he was most emphatic a little later in his belief that no law permitting the introduction of slaves could possibly have been passed through Congress.¹ Immediately after the dispersion of Congress, the Emperor organized a Junta of thirty-five members, which succeeded to the legislative powers of the former body. Its members were at once besieged by the indefatigable Austin. On November 14, the same bill which had been reported to Congress was taken up by the Junta. The article relative to slavery was reached on the 26th. and provoked some discussion. All were anxious to secure total abolition as soon as possible, but all were inclined to pay due regard to the rights which masters had acquired under existing laws. Señor Parras alone presented the subject from the point of view of the colonists. He explained that there would necessarily be a great scarcity of labor in the new settlements ; and said that the committee had been assured that colonists would be unwilling to remove to the Mexican provinces, unless some provision was made for protecting them in the ownership of their slaves. He thought that sufficient safeguards were thrown around the privilege extended to the colonists, in the prohibition of the slave trade and in the emancipation of all children of slaves, born in the Empire, at the age of fourteen.² The article was finally passed in the following form :

There shall not be permitted, after the promulgation of this law, either purchase or sale of slaves that may be introduced into the empire. The children of such slaves, who are born within the empire, shall be free at fourteen years of age.³

The passage of the colonization bill, and particularly of the article relating to slavery, was probably due to the tact and

¹ "Nunca hubiera pasado ningun artículo permitiendo esclavitud en el Imperio por un momento de ningun modo cualquiera, por el Congreso." — Austin to Governor Trespalcacios, January 8, 1823. Austin Papers, unclassified.

² Diario de las sesiones de la Soberana Junta, pp. 65, 66.

³ "No podrá hacerse, despues de la promulgacion de esta ley, venta ni compra de los esclavos que sean conducidos al imperio. Los hijos de éstos que nazcan en él, serán libres á los catorce años de edad." — *Ibid.*, p. 66.

energy of Austin. In his letter of January 8, 1823, to Governor Trespalcios, he said :

I talked to every member of the Junta upon the necessity which existed in Texas, Santander and all the other uninhabited provinces, that the new colonists should be permitted to bring their slaves, and in this manner I procured the article.¹

This is a quiet way of saying that the clause referred to was probably carried through the Junta by Austin's persistent lobbying.

There must have been considerable opposition in the committee to this concession to slavery. Four days before the article came up for discussion by the Junta, Austin wrote to Josiah H. Bell as follows:

As the law now is, all slaves are to be free in ten years, but I am trying to have it amended so as to make them slaves for life and their children free at twenty-one years,— but do not think I shall succeed in this point, and that the law will pass as it now is, that is, that the slaves introduced by the settlers shall be free after ten years. As regards all other matters there will be no difficulty.²

As there had been no discussion of the matter in the Junta prior to the writing of this letter, and as during the discussion the bill never received the form mentioned by the letter, the state of affairs referred to by Austin is most probably accounted for by the supposition that there was a warm debate in the committee before the subject came up in the Junta. At any rate, Austin seems to have been unduly despondent, for he gained almost as much as he hoped for — perhaps because of his never-ceasing representations “to every member of the Junta.”

The completed colonization law was promulgated by the Emperor on January 4, 1823. It was annulled after the overthrow of Iturbide; but, by special decree of the new government, Austin's grant was confirmed and he was allowed to go forward with its settlement under the provisions of the annulled law.

¹ “Hablé á cada individual de la Junta sobre la necesidad que havia en Texas, Santander y todas las otras Provincias despobladas, que los nuevos Colonos traerian sus Esclavos y de este modo procuré el artículo.”

² Austin to J. H. Bell, November 22, 1822. — Austin Papers, B 19.

Thus it was that the government of Mexico, while all buoyant with the hopes born of the Revolution and moved by theories of the equality and brotherhood of man, authorized the introduction of negro slavery into one of its fairest provinces, while it deluded itself with the belief that it was providing for the almost immediate extermination of the abhorred institution.

In the mean time the "Texas fever" had spread rapidly through most of the slave states of the American Union, and immigration to that province became everywhere the topic of common conversation. When Austin returned to the United States, in 1821, from his exploring tour through Texas, he found nearly one hundred letters from the neighborhood of his old home in Missouri awaiting him at Natchitoches. His partner wrote him from New Orleans that "you and your colony excite more interest than the assembled sages of the nation." Many propositions reached him from men who desired to become sub-contractors and who offered to introduce bodies of settlers ranging in number from ten to three hundred. Austin was elated. He addressed a letter to the governor of Texas, asking that his grant be enlarged and that all restrictions as to the number of his colonists be removed.¹

The great interest in the Texas colony, which was rapidly spreading throughout a large portion of the United States, also assumed a practical form. Several vessels sailed from New Orleans during the winter of 1821-22, bearing colonists and supplies; it is known that one of these vessels had on board sixty settlers, and another a few more than twenty. A great many immigrants came by land from Natchitoches. "Camps" sprang up along the Colorado and the Brazos, and the prospect seemed fair that a province would be peopled and civilized in a day. But Austin's long absence in Mexico, together with a number of disastrous events in Texas, served to discourage the settlers; and when he came back from the capital in 1823, he found that a large number of his followers had returned home. Unfavorable reports as to the government of Mexico, and particularly as to adverse slavery legislation, had also become

¹ Austin to Antonio Martinez, October 13, 1821. — Austin Papers, A 16.

current in the United States, and immigration had almost wholly ceased. Austin's return, however, brought revived hope; confidence was restored, and before the end of 1824 he had the satisfaction of seeing all but a very few of the three hundred families in possession of their land. The success of the colony was assured.

The question of slavery, however, was by no means finally disposed of by the decree of Iturbide's Junta, which allowed American immigrants to bring their slaves into Texas. The Mexican people had still to speak. The national constitution, which might dispose of the matter, was yet to be adopted; and, after the federal form of government was determined upon, the framing of the state constitution and of the state colonization law offered other opportunities for the destruction of the institution in Texas.

The Congress which Iturbide had dispersed in October, 1822, reassembled the following March and remained in session till October 30, 1823.¹ It made only one provision affecting slavery. By decree of October 14, the province of Itsmo was created and opened to foreigners. Immigrants were allowed to bring their slaves, but a distinct warning was probably intended in an otherwise unnecessary clause, which said that they should be subject to whatever laws might be made in future relative to such property.²

The Constituent Congress which framed the Mexican constitution met in November, 1823. A decree of July 13, 1824, left no room for doubt as to the attitude of that body towards at least one phase of the slavery question. It prohibited the slave trade, domestic and foreign, in the most positive terms. Infractions of the law were to be punished with the greatest severity: any vessel engaged in this traffic, which brought slaves to Mexico, was to be confiscated with its cargo; and the owner, purchaser, captain, master and pilot were to be condemned to a year's imprisonment. Slaves brought into the country by such trade recovered their freedom the moment they touched Mexi-

¹ Dublan y Lozano, *Legislacion Mexicana*, I, 632 (note) and 686 (note).

² *Ibid.*, pp. 682-84.

can soil. A suspension of penalties for six months was, however, declared in favor of those colonists who might wish to land slaves in the recently created province of Itsmo.

This decree was directed essentially against the *slave trade*; it contained no express prohibition of the removal of slaves to Mexico by their owners, whether citizens or immigrants, for purposes other than trade. The exception made in favor of the colonists on the isthmus of Tehuantepec may possibly be construed as indicating the intention of Congress to exclude the slaves of all other colonists, and may thus be regarded as an implied prohibition of the further introduction of negroes into Texas. It will be noted, however, as we proceed, that the Congress of Coahuila and Texas, which was hostile to slavery, did not so construe it, but expressly gave the colonists permission to bring in their slaves for six months after the publication of the state constitution of 1827.¹

¹ Lucas Alaman (Iniciativa de ley, *etc.*, a message to Congress, printed in Filisola's *Guerra de Tejas*, II, 595) takes the view that all slaves brought to Texas after this decree was published should have gained their freedom in virtue of the provision of section 2 of the decree.

Professor von Holst (*History of the United States*, II, 553) says this decree prohibited the further importation of slaves. "But Texas was a great way off," he continues, "and the arm of the Mexican government was not long. Now, as before, settlers came with their slaves from the slave states to Texas." But he says nothing of the express permission of the constitution of Texas and Coahuila, as late as 1827, to continue this importation for six months after its publication. The importance of this decree, involving as it does the question as to whether the Texans willfully violated the federal law of Mexico, warrants the quoting of it entire:—

El soberano congreso general constituyente de los Estados Unidos Mexicanos, ha tenido á bien lo siguiente:

1. Queda para siempre prohibido en el territorio de los Estados Unidos Mexicanos el comercio y tráfico de esclavos, procedentes de cualquiera potencia, y bajo cualquiera bandera.

2. Los esclavos que se introdujeran contra el tenor del artículo anterior, quedan libres con solo el hecho de pisar el territorio Mexicano.

3. Todo buque, ya sea nacional ó extranjero, en que se trasporten ó in-

The sovereign general Constituent Congress of the United Mexican States has been pleased to decree the following:

1. Commerce and traffic in slaves, proceeding from any country and under any flag whatsoever, is forever prohibited in the territory of the United Mexican States.

2. Slaves that are introduced contrary to the tenor of the above article are free in virtue of the mere act of treading Mexican territory.

3. Every ship, whether domestic or foreign, in which slaves are transported

Here the matter rested, so far as federal legislation is concerned. The *Acta Constitutiva*¹ (adopted January 31, 1824) was silent on the subject, as was the national colonization law.² The federal constitution, which was completed and promulgated on October 4, 1824, made no mention of the subject.³ When Congress adjourned in December, Mexico had no law prohibiting incoming settlers from bringing their slaves with them, unless, indeed, the decree of July 13, 1824, can be construed as implying such a prohibition.

Some alarm had been created among the American settlers by the rumor that it was the intention of the Mexican leaders to introduce into the federal constitution a clause abolishing slavery. At the invitation of the acting political chief of

trouduzan esclavos al territorio Mexicano, será irremisiblemente confiscado, con el resto de su cargamento; y el dueño, el comprador, el capitan, el maestre y el piloto sufrirán la pena de un año de presidio.

4. Esta ley tendrá su efecto desde el mismo día de su publicacion; pero en cuanto á las penas prescritas en el artículo anterior no lo tendrá hasta seis meses despues, respecto de los colonos que en virtud de la ley de 14 de Octubre último, sobre colonizacion del istmo de Guazacoalco, desembarquen esclavos con el fin de introducirlos en el territorio Mexicano.

to or introduced into Mexican territory, shall be irremissibly confiscated, with the remainder of its cargo; and the owner, the purchaser, the captain, the master, and the pilot shall suffer the penalty of a year's imprisonment.

4. This law shall take effect from the day of its publication, but the penalties prescribed in the above article shall be suspended for six months with reference to those colonists who, in virtue of the law of the fourteenth of October last upon the colonization of the isthmus of Guazacoalco, may land slaves with the intention of introducing them into Mexican territory.

— Dublin y Lozano, *Legislacion Mexicana*, I, 710.

¹ Dublin y Lozano, *Legislacion Mexicana*, I, 693-97. The first draft of this act, which became the basis of the constitution of 1824, was probably drawn up by Austin. He tells us that Arispe, who was the leader of the federal party and the chairman of the committee on constitution, asked him for such a document. There is in Hon. Guy M. Bryan's collection a copy with annotations in the handwriting of Arispe, and it is known that copies of the document were made for Arispe's friends in various parts of Mexico.

² Adopted August 18, 1824. — *Ibid.*, p. 712.

³ *Ibid.*, pp. 719-37. Translated in Edward's *History of Texas*, Appendix, pp. 323-36. The statement of Professor von Holst (*Constitutional and Political History of the United States*, II, 553) and others that the constitution "declared all children thereafter born of slaves free" is, of course, wholly at variance with the facts.

Texas, the inhabitants of Austin's colony held a mass meeting on June 5, 1824, to formulate instructions for the guidance of the representative of Coahuila and Texas in the Constituent Congress. At this meeting two subjects were considered — the tobacco monopoly of the government and slavery, and a memorial on each was addressed to Congress.¹ The memorial on slavery asked that the slaves of the three hundred families settled in Texas be exempted from any emancipation provision that might be made by Congress; it appealed to the guarantee made by the colonization law, under which most of the settlers had felt safe in bringing their slaves with them; it laid emphasis upon the fact that such labor was necessary in clearing and cultivating their farms; and assured the government that no slaves had been brought into the country for speculative purposes.²

Although the Congress passed no law prohibiting settlers from bringing their slaves into Texas, the attitude of the Mexican people soon became well known in the United States and materially injured the Texas settlements. People were slow to put in jeopardy such valuable property as their slaves. Exaggerated rumors became current everywhere, and from all quarters letters came to Austin asking for more definite information in regard to the matter. The following extract from a letter from J. A. E. Phelps, of Missouri, to Austin will serve to show how this decree against the slave trade became distorted by the United States newspapers:

Nothing appears at present, [he wrote,] to prevent a portion of our wealthy planters from emigrating immediately to the province of Texas but the uncertainty now prevailing with regard to the subject of slavery. There has been a paragraph that has gone the round of nusepaper publication in the United States, perporing to be an extract from a Mexican paper; Which precludes the introduction of Negro property into the Mexican Republick, without exception; Subjecting the persons so offending to the severest penalties, and also

¹ Instructions were drawn up for the representative of Texas in the provincial deputation, for it was through that body that the memorials were to reach the national Congress.

² Proceedings of meeting. — Austin Papers.

an immediate emansipation of those slaves now belonging to the citizens of the province of Texas ; and fredom to the *slave* that *touches* the soil of Mexico. If this be a fact, it will check the tide of emigrating spirits at once ; and indeed it has had its influence already.¹

Rumors even more adverse to the settlement had already become current in Alabama. A letter to Austin from George Nixon, of that state, dated November 14, 1823, had this to say :

I think It my Dutey to say to you that the Genral [General Eugenio Cortez, on his way to Philadelphia, but forced to put into Mobile for repairs], Sayes to me that all Negrow in the Provances of Mexico are free, and that Slavery will not be Premited and that you have No author to Grant Lands Nor inVite Settlers to the Provanche.²

The interests of the colony perhaps suffered more from partial or exaggerated reports in the two sections just mentioned than elsewhere in the United States. But from all quarters came inquiries as to the present status of slavery and the probable future legislation of the Mexican nation. It must not be understood, however, that these reports altogether stopped immigration ; Texas was being peopled in spite of the uncertainty about slavery. The Mexican authorities in Texas were not ignorant of the fact that the incoming colonists were bringing slaves with them, and yet they continued to encourage immigration, not regarding the introduction of slaves by their owners removing to Mexico as a violation of the decree of July 13, 1824.

It is now time to inquire into the attitude of the state government of Coahuila and Texas towards slavery, and to follow briefly the acts of the state Congress. By the *Acta Constitutiva*, January 31, 1824, the provinces of Coahuila, Texas and Nuevo Leon were united into one state under the title "Eastern Internal."³ By decree of May 7, 1824, Nuevo Leon was made a

¹ J. A. E. Phelps, Pinckneyville, Mo., to Austin, June 16, 1825.—Austin Papers, A 21.

² George Nixon, Mobile, Ala., to Austin, November 14, 1823.—*Ibid.*, A 32.

³ Dublan y Lozano, *Legislacion Mexicana*, I, 693.

separate state,¹ Coahuila and Texas remaining united. The old name was dropped and the state was known as "Coahuila and Texas." The federal constitution adopted five months later approved this arrangement,² and Coahuila and Texas continued legally united until the Revolution. The Constituent Congress of the state met in August, 1824, and remained in session till June, 1827.

The colonization law — under which all the contracts in Texas, except Austin's first, were made — was approved March 24, 1825.³ This was one of the most liberal invitations ever issued by a nation to foreigners. Grants of land, to which the adjective "princely" may in truth be applied, were offered almost for the asking. As those who passed the law were well aware that it was directed chiefly to the Americans, it cannot be said with any semblance of support that the Mexicans had yet come to regard the Americans with jealousy or suspicion. Nor could they have felt much alarm at the introduction of the slaves, who they knew were every day being brought across the border. The slavery question, which was inseparably connected with the colonization of the provinces, was dismissed, so far as the state colonization law is concerned, as follows :

Art. 46. In respect to the introduction of slaves, the new settlers shall subject themselves to the laws that are now, and shall hereafter be established on the subject.⁴

This was understood to amount practically to a declaration of at least temporary toleration, not only of slavery, but also of the further introduction of slaves by incoming settlers. It is true that this view is open to objection if we regard the national law of July 13, 1824, as does Professor von Holst, as excluding the introduction of slaves into all other colonies, by making a

¹ Dublan y Lozano, *Legislacion Mexicana*, I, 706.

² *Ibid.*, p. 720. Rhodes (*History of the United States from the Compromise of 1850*, I, 76) makes the mistake of saying that Texas and Coahuila were constituted one state by the Mexican constitution of 1827.

³ *Laws and Decrees of Coahuila and Texas*, pp. 15-23.

⁴ "Los nuevos pobladores, en quanto á la introduccion de esclavos, se sugetarán á las leyes establecidas, y que en adelante se establecieren sobre la materia." — *Laws and Decrees of Coahuila and Texas*, p. 22.

special exception of the isthmus of Tehuantepec. The matter need not, however, be discussed at this point, since the interpretation put upon that law a little later by Austin and the state Congress will perhaps aid us in passing final judgment.

The Congress made slow progress in the matter of framing the constitution of the state; but it soon became known that the body was hostile to slavery. The alarm was sounded through Texas; and, as usual, exaggerated rumors flew from settlement to settlement, until many of the slaveholders actually began to make preparations to return to the United States.¹ Even Austin seems to have been much affected by the panic, as he faced the possibility of losing his most valuable colonists, and in consequence was plunged into one of those fits of gloom which sometimes settled heavily upon his heart. He drew up a strong memorial, which was pronounced by his Bexar friends to be *algo duro*,² and forwarded it through the political chief to Congress. The Americans in Texas, of course, warmly supported Austin's view. The Spanish leaders in Bexar were but little behind in endorsing the sentiments of the empresario. There has been, it appears, a general misapprehension as to the relations existing at that time between the Spanish and American elements in Texas. Instead of being hostile to the interests of the colony, the citizens of Bexar were willing to go almost as far as the American settlers in asking the government to grant toleration to slavery. When an adverse report on this subject was made to Congress in the form of the first draft of the thirteenth article of the constitution, the Bexar authorities at once interested themselves to have the objectionable article eliminated. Austin's brother, then in Bexar, wrote as follows:

The Ayuntamiento of this place presented a memorial to the Legislature as soon as the *project* arrived — praying that the discussion on that important point might be suspended until they could have time

¹ Jesse Thompson, San Felipe, to John Spoul, Ayish (Austin Papers, D 25), says he has acquired information as to the prohibition of slavery which leaves no doubt on the subject, that he feels entirely ruined, and that he thinks he will make immediate preparation to remove to the United States.

² J. E. B. Austin, Bexar, August 22, 1826, to S. F. Austin. — Austin Papers, Q 59.

to *consider* upon it, and inform the other Ayuntamientos of the Department that they might do the same. Since then they have given it the attention it merited—and by the last mail *have sent* up a *representation couched* in the strongest language they could express in *favor* of the *admission* in the *New Colonies*—they declare it to be *indispensable* for the prosperity of this Department; in fact they have said all they can say—as to the project of freeing the slaves of the 300 families they declare it to be an unjust abuse of the rights of the Colonists.¹

In such language the brother of the empresario expressed his satisfaction as to the attitude of the Mexican officials in San Antonio.

Austin felt that a crisis had been reached. Writing to one of his agents, who was making contracts for him in the United States while the matter was pending in Congress, he insisted that it be explained to the families who were then about to start to Texas, and said that he would in no manner be held accountable or censurable for embarrassments arising from the slow action of the government. The constitution, he explained, was under discussion and the slavery question was yet undecided; he believed that the unrestricted admission of slaves would not be permitted, though most probably those then in the colony would remain slaves for life.²

In addition to his exhortations addressed to the Texas representative and the memorial which he directed to Congress, Austin felt that a personal agent in the capital was necessary to the interests of Texas. His brother, James Brown Austin, was selected for this mission. After remaining for some time in Bexar, probably with good effect, Brown Austin reached the capital in September. He found Congress almost unanimous on the subject of slavery, and was at once convinced that “the *most* that can be obtained is permission for the three hundred families to hold their slaves.”³ The anti-slavery men were led

¹ J. E. B. Austin, Bexar, August 22, 1826, to S. F. Austin.—Austin Papers, Q 59.

² Austin to Gen. Humphrey Fullerton, October 2, 1826.—*Ibid.*, A 32.

³ J. E. B. Austin, Saltillo, to S. F. Austin, September 23, 1826.—*Ibid.*, unclassified.

by the deputy Carrillo, who seems to have been the controlling spirit in the body. It was believed by Brown Austin that all the members except Bastrop and one or two others had been bought¹ by this aspiring leader. At all events, they were under his control. The only man in the body that defended the slave interest was the Baron de Bastrop, the Texas representative; and nobly did he work for what he believed to be the welfare of his adopted section. "The *Viejo* is *very* warm on the subject," wrote Brown Austin from Bexar to his brother, after having seen a letter from Bastrop to Cavallos, which in some way had fallen into the hands of the political chief of Texas; "I know not what would have been our fate if he had not been a member of the legislature. Our situation would have been a deplorable one indeed."²

It would be interesting to follow the debates on this topic, but the want of the printed journals leaves us to conjecture as best we may the various forms assumed by the thirteenth article of the constitution before it was finally incorporated in that instrument. Certainly a movement was on foot to abolish slavery altogether, even to the extent of emancipating the slaves of the first settlers. "At all events, if it comes to the worst," were the words of Brown Austin, "and the slaves of the 300 families are *freed*, we have a right to appeal to *Congress* — where I am convinced all will go right."³ Bastrop's tireless exertions, the presence of Brown Austin in the capital, and the strong remonstrances which came from a united Texas, probably had considerable effect in moderating the demands of the extreme party. The Baron even went so far in his loyalty to Texas as to threaten that he would withhold his signature from the finished constitution, if it contained an article freeing the slaves of the Texas colonists.⁴ Brown Austin reported that the representation of his brother so clearly demonstrated the injustice of such an act "that the Author of the Article

¹ J. E. B. Austin, Saltillo, to S. F. Austin, October 10, 1826.—Austin Papers, D 36.

² J. E. B. Austin, Bexar, to S. F. Austin, August 22, 1826.—*Ibid.*, Q 59.

³ *Ibid.*

⁴ J. E. B. Austin, Saltillo, to S. F. Austin, September 23, 1826.—Austin Papers, unclassified.

himself [Carrillo] asked permission to withdraw it.”¹ The substance of the article thus withdrawn is not stated; but perhaps we should not fly wide of the mark if we should guess that it was a clause emancipating all slaves in Texas. The withdrawal of the article, whatever it may have been, by Carrillo seems to have marked the crisis in the discussion of the matter. The slaves then in Texas were not to be freed. It remained to settle the status of the children born of slaves after their removal to the state, and to pass upon the question of the further introduction of slaves by incoming settlers.

The leaders of the Texas party seemed to have realized, from the first, that it would be useless to contend for the continuation of their property rights in the generation born of slave parents in Texas after the publication of the constitution. They did try, however, to claim as much service from that generation as possible. Brown Austin urged Congress to consider the wisdom of retaining the children under the master's supervision until they had acquired some “useful branch of industry whereby they might gain a livelihood — instead of becoming *vagabonds* and rogues.” He believed that no such useful branch of industry could be acquired if they were freed at birth or fourteen, and suggested instead that they should be compelled to remain with their masters till they were twenty-one or even twenty-five. He laid emphasis, too, upon the injustice of compelling the master to maintain the children of the slaves during the period when their support could be little less than a total loss, without providing some means of compensation, as by extending their period of compulsory service till the owner had been remunerated. He found the members inclined to listen to his arguments, and he left Saltillo indulging the pleasing thought that he had probably been instrumental in preserving to the Texas settlers the labor of the next generation of negroes till they had reached the age of twenty-one or twenty-five. His hopes proved wholly unfounded; the thir-

¹ J. E. B. Austin, Saltillo, to S. F. Austin, October 10, 1826. — Austin Papers, D 36.

teenth article provided that after the promulgation of the constitution the children of all slaves should be free at birth.¹

Bastrop had early come to the conclusion that a further introduction of slaves into Texas would be strictly forbidden.² We have as yet no knowledge of the considerations which moved Congress to postpone the effective operation of the thirteenth article for six months after the publication of the constitution, during which time slaves might be freely brought into the republic. Probably it was urged upon the notice of that body that many settlers were on their way to Texas, who might reach the border before hearing of the new constitution, and would then be compelled either to return or to lose their slaves. Simple justice required that ample notice be given to intending immigrants.

The thirteenth article, as it was finally adopted and as it appeared in the constitution, which was published March 11, 1827, reads as follows :

Art. 13. From and after the promulgation of the Constitution in the capital of each district, no one shall be born a slave in the state, and after six months the introduction of slaves under any pretext shall not be permitted.³

Six months later the Congress issued a decree for carrying into effect the provisions of the above article. The municipalities were ordered to make a list of all slaves within their limits, the deaths and births were to be reported to the state government every three months and a careful register of the same was to be kept by the ayuntamientos. In addition several provisions were incorporated in the law which were intended to ameliorate the condition of the blacks : a tenth of the slaves must be emancipated whenever ownership changed, which, of course, could be only by inheritance ; the ayuntamientos were

¹ Laws and Decrees of Coahuila and Texas, p. 314.

² J. E. B. Austin, Saltillo, to S. F. Austin, September 23, 1826. — Austin Papers, unclassified.

³ " Art. 13. En el estado nadie nace esclavo desde que se publique esta constitucion en la cabecera de cada partido, y despues de seis meses tampoco se permite su introduccion bajo ningun pretesto." — Laws and Decrees of Coahuila and Texas, p. 314.

also required to provide for the "best education that can be given" the emancipated children.¹ A little more than two months later an additional article to this decree was passed, which allowed the slave to change his master, provided the new master would indemnify the old.²

It will be seen from the above that the Congress of Coahuila and Texas did not even consider the proposition, advanced by Alaman and accepted by Professor von Holst, that the law of July 13, 1824, prohibited the further introduction of slaves into Mexico.³ Not once was it intimated by the younger Austin in his long letters to his brother that this view had been accepted by even the most radical opponent of slavery. Congress was not occupied with discussing the advisability of enforcing a law already in existence, but provided for the first time the proper regulations for introducing and holding negro slaves in Texas. It did not accuse the Texans of having trampled upon the federal law, but specifically granted them an extension of time during which the prohibitory clause in the newly made constitution should be suspended. The letters and documents above referred to establish beyond question, it seems to me, that the Congress of Coahuila and Texas, as well as the citizens of Texas, did not regard the bringing in of slaves by immigrants as contrary to either state or federal law.

The prohibition in the constitution undoubtedly operated to the temporary disadvantage of the colonies. During the discussion of the matter by Congress, few men were willing to risk the possibility of losing their slaves by carrying them into Texas; and after the prohibition went into effect, it was some time before the ingenious plan of evading the law became well known in the United States. It was not long, however, before slaves were again crossing the border with their masters, in spite of the seemingly rigid prohibition contained in the constitution. The Texas settlers developed a method of evading the law which was more in accord with Mexican institutions; and while it just as effectively secured to the master the absolute

¹ Laws and Decrees of Coahuila and Texas, pp. 78, 79.

² *Ibid.*, p. 92.

³ See above, p. 398, 399.

control of the servant's labor, it left unmentioned the obnoxious word "slave," and thus did not outrage the Mexican's theory of the equality of men. The system adopted by the Texans was the peonage common throughout Mexico.

As has been said above, it is hard to believe that the thirteenth article was inserted in the constitution out of any motives of jealousy or hostility towards Texas on the part of the leaders of Coahuila: too many exclusive privileges and temporary exceptions were granted to Texas by the same Congress to permit such a view. It was more than likely that the abstract theorizing of a non-slaveholding people who had just won their independence had aroused opposition to slavery. For a few years following the publication of the constitution the attitude of the successive state Congresses was favorable to Texas. Many grants of monopolies in trade were made to Americans, and special laws or exceptions to laws were passed from time to time in favor of the Texas settlements. So it happened that when the question of introducing and controlling negro labor was again laid before Congress without the mention of the word "slave," the members did not feel that violence had been done to their principles, but proceeded to undo practically all that the constitution had done in favor of emancipating the slaves brought into the colonies.

The harmless-looking decree of May 5, 1828, which again opened Texas to slavery, reads as follows :

The Congress of the State of Coahuila and Texas, attending to the deficiency of workingmen to give activity to agriculture and the other arts, and desiring to facilitate their introduction into the State, as well as the growth and prosperity of the said branches, has thought proper to decree :

All contracts, not in opposition to the laws of the State, that have been entered into in foreign countries, between emigrants who come to settle in this State, or between the inhabitants thereof, and the servants and day laborers or workingmen whom they introduce, are hereby guaranteed to be valid in said State.¹

If we would fully understand to what extent there was a

¹ Laws and Decrees of Coahuila and Texas, p. 103.

"deficiency of workingmen," and in what character it was desirable "to facilitate their introduction into the State," we must consider a few other facts in connection with the decree just quoted. The laborers needed in Texas were for the opening and cultivation of the great plantations along the river bottoms, for the settlers of Texas at that time regarded the prairies and uplands as suitable only for cattle-raising. In these bottoms negro labor could be employed to far greater advantage than white labor, owing to that peculiar physical characteristic of the negro which renders him almost secure against attacks of the all-prevalent malaria. These plantations are worked to this day almost exclusively by black labor. It was negro laborers, then, that the decree regarded as especially desirable.

Not quite a year after the passage of the decree under consideration, Austin, in a letter to Wharton, said emphatically that "the men now in power in this state wish to tolerate slavery," and that settlers might bring their negroes without fear.¹ Again, in a letter to Ellis, Sutherland, Winston, Royal and others, written at a time when Austin believed that enough slaves had been admitted to Texas, he stated that the object of the decree of May 5, 1828, was "to permit families to bring the necessary and indispensable house servants and laborers."²

If any doubt yet remains as to the spirit of the decree, one more instance may serve to resolve it. Early in 1830 the legislature of Louisiana ordered the expulsion of all free negroes and mulattoes who had illegally entered that state since 1825. Here seemed to be a good opportunity to secure the needed workingmen for the Texas plantations. Instead, however, of offering inducements to these laborers to emigrate to Texas, we find the Mexican vice-consul in New Orleans publishing notices that such negroes are strictly forbidden to enter Texas, and that shipmasters will not be allowed to land them on the Texas coast.³ The free negro was not wanted in Texas.

¹ Austin to Wharton, April 24, 1829. — Austin Papers, A 32.

² Austin to Ellis *et al.*, June 16, 1830. — *Ibid.*, D 94.

³ James W. Breedlove, Mexican vice-consul, New Orleans, to Austin, August 11, 1830. — *Ibid.*, D 49.

In the light of these facts, we are driven to the conclusion that the Congress of Coahuila and Texas, after a harmless salvo in honor of abstract principles, quietly solved the practical difficulty by a decree which was intended to reopen Texas to negro bondage, now disguised under the more pleasing name of contract labor. That the Texans evaded the law prohibiting the further introduction of slavery is an undoubted fact, but it must be added that they did so with the express consent and connivance of the state government.

The form of contract under which the negroes were brought into Texas after the decree of May, 1828, was unique. I regret that the limits of this paper forbid my introducing it here in full. Prior to leaving the United States, the master and the slave appeared before a notary public, or some other official whose seal would give validity to such documents, and in the most formal manner gave their adhesion to the agreement, which was duly signed and witnessed. The document usually begins with the statement that the negro is held as a slave under the existing laws of the state in which the contract is drawn up; that he is worth so much; that he desires to accompany his master to Texas, where he will receive his freedom on entering the state; and by way of compensating his master he agrees to pay in labor the sum at which he is valued, plus the cost of removal to Texas. The necessary cost of clothing, *etc.*, is to be deducted from his wages as a first charge. The wages named in a blank form found among Austin's papers is twenty dollars per year.

And furthermore [says the contract] the said E. F. [the slave], being desirous that his child (or children) should enjoy the benefits of the laws of said state of Coahuila and Texas, and that he (or they) should be removed to the same by said C. D. [the master], therefore, as parent and natural guardian, he, the said E. F., contracts and agrees with the said C. D.

that his child or children shall serve on the same terms as the father, wages to begin when the child reaches the age of eighteen. The contract even anticipates the birth of other

children after removal to Texas, and provides that they shall serve the master till they are twenty-five without wages, this

being in consideration of the benefits they receive from the laws of that state in consequence of the removal of their parent, E. F., by said C. D., and which they never could have enjoyed unless it had been secured to them by this contract, under which said C. D. was induced to remove said E. F. to said state of Coahuila and Texas.

After the expiration of the twenty-five years, the children born after removal are to continue serving on the same terms as the father, until all debts due the master are paid. The master is held bound

to instruct said children in some useful branch of industry that will make them useful members of the community. . . . And said E. F. generally contracts and agrees with the said C. D. faithfully to serve him or his representatives as a servant and laborer as above stated, and to be obedient and submissive as a good and faithful servant should be, and faithfully to comply with this contract under the penalty of . . . dollars.

Such a contract, properly signed by the parties concerned and certified by the notary's seal and the signature of two witnesses, made the negro thus brought into Texas as truly a slave as if his master had remained in the United States. It was of course a hopeless dream to think of ever paying the debt acknowledged in the agreement, or even that contracted from year to year for clothing and other necessities. Under this legalized evasion of the law the Texas immigrants continued to bring in their slaves, and the agitation of the subject subsided for a year or two.

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